

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN JIM SHOCKLEY**, on February 10, 2003 at 9 A.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Rep. Jim Shockley, Chairman (R)
Rep. Paul Clark, Vice Chairman (D)
Rep. Jeff Laszloffy, Vice Chairman (R)
Rep. George Everett (R)
Rep. Tom Facey (D)
Rep. Steven Gallus (D)
Rep. Gail Gutsche (D)
Rep. Christopher Harris (D)
Rep. Michael Lange (R)
Rep. Bruce Malcolm (R)
Rep. Brad Newman (D)
Rep. Mark Noennig (R)
Rep. John Parker (D)
Rep. Holly Raser (D)
Rep. Diane Rice (R)
Rep. Scott Sales (R)
Rep. Ron Stoker (R)
Rep. Bill Thomas (R)

Members Excused: None.

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Lisa Swanson, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 402, 2/3/2003; HB 456, 2/3/2003;
HB 214, 2/3/2003
Executive Action: HB 456; HB 214

HEARING ON HB 402**Sponsor:** REP. JOHN PARKER, HD 45, Great Falls**Opening Statement by Sponsor:**

REP. PARKER opened on HB 402, stating that methamphetamine (meth) crimes in Montana are having a devastating impact on society. He explained that despite diligent efforts of law enforcement, the number of meth labs in Montana grew profoundly in 2002. He stated that in 2002, DEA statistics revealed that Montana taxpayers paid \$1,005,000 in hazardous waste clean-up expenses. He emphasized that meth use has been linked to domestic assaults, drive-by shootings, burglaries, robberies, forgeries, internet crime and thefts. He stated that this bill would increase the maximum penalties of operating an unlawful clandestine methamphetamine lab, and doubling of sentences.

EXHIBIT (juh29a01)**{Tape: 1; Side: A; Approx. Time Counter: 1 - 32}****Proponents' Testimony:**

Sergeant Dan Kohm, Cascade County Sheriff's Office, Central Montana Drug Task Force, supported HB 402, to increase the penalties for the manufacturing of methamphetamine. He read a poem written by a mother who suffered loss and destruction from her addiction to meth. He stated that in 1999 there were 33 meth labs which cost the State of Montana \$235,000 in clean-up costs. In 2000, 86 meth labs were reported in Montana with clean-up costs at \$631,000. He mentioned that Cascade County went from two labs in 1999, to 21 labs in 2000. He explained that the responsibility for the expense falls in the hands of the land and/or property owner.

He stated that we are all victims of meth. He broke the figures down to show how much it costs society using, as an example, a figure of 100 pounds of meth. The cost per pound paid in Montana is approximately \$10,000 a pound. He stated the middleman pays about \$1200 an ounce which amounts to that 100 pounds taking \$1,927,000 out of the community. He explained the average, everyday user, uses a gram of meth a day, at a cost of \$100 a gram. He stated that if you multiply a gram of meth by a hundred pounds, you get \$4,480,000. He stated that the costs involved in the investigation of meth labs has caused a huge burden on law enforcement's investigation budgets. He explained that the most recent investigation involved two separate labs which required swat teams of 25 officers working approximately 15 hours a day.

EXHIBIT(juh29a02)

EXHIBIT(juh29a03)

{Tape: 1; Side: A; Approx. Time Counter: 33 - 171}

Pat Brinkman, Detective, Great Falls Police Department, supported HB 402. He spoke of the dangers of meth labs to neighbors, other innocent bystanders, children, firemen, and the police department.

Detective Brian Black, Great Falls Police Department, supported HB 402. He was trained and certified as a clandestine lab technician. He stated that methamphetamine use in Montana is not a problem but an epidemic. He has investigated 45 meth cases. He explained that approximately 90 percent of all property crimes are meth-related. He told of storage units filled with stolen goods which meth users and dealers stole to trade for meth.

{Tape: 1; Side: A; Approx. Time Counter: 172 - 329}

Detective Donny Gerhardt, Great Falls Police Department, supported HB 402. He spoke of a 2001 incident that occurred in Great Falls, involving the manufacture of methamphetamine. He stated that they had a search warrant for a suspected meth lab. He and other officers conducted surveillance at the residence to be searched. They saw a vehicle pull up to the residence and individuals load it up. Officers followed the vehicle, and then pulled it over in a heavy traffic area by the Tenth Street bridge at three in the afternoon. Officers ordered all the occupants to get out of the vehicle, including a young child. Officers discovered a meth lab in the trunk of the vehicle. At that point, they called in the hazardous waste team from the Great Falls Fire Department. Officers involved in the traffic stop, the suspects, and the child, had to be remove their clothes, on the street, in the afternoon traffic, in order to be decontaminated from the chemicals from the meth lab.

He investigated another case which involved a meth lab. It began with the investigation of a nine-year-old whose back was badly burned. The two nine-year-old children were playing behind their house in the alley when they found a pop bottle with a tube coming out of it. One child thought it would be funny to pour it onto the other child's back. Unbeknownst to the children, the bottle contained sulphuric acid resulting in second-degree burns to the child's back. **Detective Gerhardt** explained the hideousness of having to explain to the mother of the burnt child, that the children were victims of methamphetamine.

{Tape: 1; Side: A; Approx. Time Counter: 330 - 512}

Jim Smith, Montana Sheriff's and County Attorney's Association, supported HB 402. He stated that increasing the penalties may have a deterrent effect whereas the current penalties have none.

{Tape: 1; Side: B; Approx. Time Counter: 1 - 10}

REP. BRAD NEWMAN, HD 38, Butte, supported HB 402. He appeared as the chief criminal prosecutor for Butte-Silverbow. He stressed that meth is the single, biggest threat to community safety. He felt that HB 402 was a well-reasoned bill that would deal severely with the manufacturers of meth. He stressed that the manufacturers of meth are the real predators, and the intent of the bill is to get them off the street. He stated that most meth labs have bombs, arsenals, and volatile chemicals. He stressed that the labs are being set up in houses, rental units, storage sheds, motels, and vehicles.

{Tape: 1; Side: B; Approx. Time Counter: 11 - 47}

Doug Neal, Montana State Fireman's Association, supported HB 402, stating that the police call the fire department when a meth lab is discovered. He stated that 99 out of 100 labs are discovered during a fire call. He stated that the firefighters respond to all fires and often do not know that the fire started from a meth lab and the place may be booby trapped. He explained the dangers the labs pose to society.

{Tape: 1; Side: B; Approx. Time Counter: 48 - 67}

John Connor, Attorney General, Department of Justice (DOJ), supported HB 402.

Jim Kembell, Montana Association of Chiefs of Police and the 560 Members of the Police Protection Association, supported HB 402. He thanked REP. PARKER for making the streets of Montana safer.

Joe Williams, DOC, supported HB 402 stating he is available to answer questions.

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REP. HARRIS asked about convictions in 2002. Director Slaughter stated that probation and parole officers track meth users very carefully. He stated that some DOC probationers have been sent back to prison for using meth and for involvement in a meth lab. The Committee asked a lot of questions about treatment and the physical effects of meth addiction. Director Slaughter stated that meth users have horrible health and teeth problems. He explained that the DOC dental costs go through the roof. He explained that it costs a lot more to incarcerate a meth user due to the heavy health and dental costs. The Committee talked about treatment versus incarceration; rehabilitation versus punishment.

REP. PARKER explained that tougher sentences would act as a deterrent. He asked the Committee to look at Senate Joint Resolution 11, sponsored by Trudi Schmidt. He explained that this bill would provide funds for an interim study on drug treatment. He stated HB 402 would send a message to manufacturers that the law views manufacturers of meth the same as arsonists and robbers. He stated that the current law provides the same penalty as a felony forgery yet this crime is so much more harmful to society. He emphasized that this bill would double the penalties.

{Tape: 1; Side: B; Approx. Time Counter: 68 - 187}

Closing by Sponsor:

REP. PARKER closed on HB 402 stating that the figures from the Attorney General's office show an increase in the growth of meth labs in Montana. He stressed that people who manufacture methamphetamine cause a devastating impact on innocent bystanders, neighbors, landowners, and property owners, law enforcement, firefighters and all Montana taxpayers. He urged the Committee to shut down Montana's meth labs by passing HB 402. He felt that shutting down meth labs will do immense good in curbing Montana's crime problem.

{Tape: 1; Side: B; Approx. Time Counter: 188 - 507}

{Tape: 2; Side: A; Approx. Time Counter: 1 - 116}

HEARING ON HB 456

Sponsor: **REP. JOHN PARKER, HD 45, Great Falls**

Opening Statement by Sponsor:

REP. PARKER opened on HB 456 stating that this bill would amend the partner and family member assault statute. He explained that

in the past, law enforcement would error on the side of caution by arresting both persons involved in a domestic dispute. He stated that there is a new doctrine called the "predominant doctrine" which is taught at the Law Enforcement Academy (Academy). He explained that "predominant" differs from the old language of "primary." He stated under the predominant doctrine, officers will arrest the predominant aggressor. He gave an example of someone throwing a drink in someone's face, then the other person, in retaliation, holds the drink thrower down and beats him in the face. The person committing the second act would be considered the predominant aggressor and would be arrested.

{Tape: 2; Side: A; Approx. Time Counter: 117 - 156}

Proponents' Testimony:

Beth Satre, Montana Coalition Against Domestic and Sexual Violence, supported HB 456. She stated that although this is a small change, it will clear up a lot of confusion. She stated that in reports across the State, officers have been misapplying the doctrine. She stated that this bill would define the concept of "predominant aggressor" and clear up ambiguities for law enforcement.

{Tape: 2; Side: A; Approx. Time Counter: 157 - 205}

Susan Tucker, Training Coordinator, Montana Coalition Against Domestic and Sexual Violence, supported HB 456. She stated that she has been with the Coalition for two years but worked in the domestic violence field for six years. She stated she teaches a class on domestic violence at the Academy. She explained that many trainees at the Academy confuse predominant aggressor with the first aggressor. She stated the Coalition's goal is victim safety.

{Tape: 2; Side: A; Approx. Time Counter: 206 - 230}

John Connor, Chief Legal Counsel, DOJ, supported HB 456. He stated that this bill is primarily a training issue.

Jim Kembell, Montana Chiefs of Police and Montana County Attorney's Association, supported HB 456.

Jim Smith, Montana County Attorney's Association, supported HB 456. He stated the amending of the language is a good idea.

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REP. NOENNIG asked Holly Beall about Line 24, Page 1 where it states, "regardless of who is the first aggressor." **Ms. Beall** stated that "primary aggressor" is difficult to enforce on the street. She emphasized that trainees are focused on their own individual ideas of what primary means. She explained that many trainees incorrectly think that "primary" means the first aggressor. She stated that "predominant" does not mean the first person to strike. **REP. NOENNIG** asked whether defining "predominant" would be helpful.

{Tape: 2; Side: A; Approx. Time Counter: 231 - 319}

Closing by Sponsor:

REP. PARKER closed on HB 456 stating that this bill is necessary to make sure that the Code reflects the nature of the training which the officers receive at the Academy.

{Tape: 2; Side: A; Approx. Time Counter: 320 - 325}

EXECUTIVE ACTION ON HB 456

Motion: **REP. FACEY** moved that HB 456 DO PASS.

Discussion:

REP. RICE asked about how an officer would determine who is the predominant aggressor. **REP. PARKER** responded that would need to be determined on a case-by-case basis.

Vote: Motion HB 456 DO PASS carried unanimously, by voice vote.

REP. FACEY moved that HB 456 go on the consent agenda. Nobody objected.

{Tape: 2; Side: A; Approx. Time Counter: 326 - 512}

{Tape: 2; Side: B; Approx. Time Counter: 1 - 135}

EXECUTIVE ACTION ON HB 214

Motion: **REP. NOENNIG** moved that HB 214 DO PASS.

Discussion:

REP. NOENNIG explained that this bill was in response to the Montana Supreme Court case which incorporated the Restatement of Torts definition of parental responsibility for their child's behavior. The Court adopted the Restatement definition. The Court required that the parents have, and exercise, reasonable control over their children. Justice Rice dissented stating that it is not practical, in modern times, to expect parents to have that capability at all times. **REP. NOENNIG** stated that the subcommittee, which included **REPS. SALES, HARRIS** and himself, agreed with the Court that parents do have a duty to control their children. He stated that the subcommittee amended the bill to replace "supervise" with "control."

Motion/Vote: **REP. NOENNIG** moved that HB 214 BE AMENDED. Motion carried unanimously, by voice vote.

Motion/Vote: **REP. NOENNIG** moved that HB 214 DO PASS AS AMENDED. Motion carried unanimously, by voice vote.

EXECUTIVE ACTION ON HB 393

Motion: **REP. NOENNIG** moved that HB 393 DO PASS.

Discussion:

The Committee discussed whether the problems in this bill could be wordsmithed away. **REP. STOKER** commented that labor has gone back in history and found a gold nugget. He stated that it boils down to two bites of the apple. **REP. MALCOLM** responded that he disagreed with the comment that labor found a gold nugget. He stated that it is more of a weapon which would hinder negotiations.

Motion/Vote: **REP. FACEY** moved that HB 393 BE TABLED. Motion failed 9-9, by roll call vote, with **REPS. CLARK, LANGE, HARRIS, FACEY, GALLUS, PARKER, RASER, GUTSCHE, and NEWMAN** voting aye.

{Tape: 2; Side: B; Approx. Time Counter: 136 - 301}

CHAIRMAN SHOCKLEY appointed a subcommittee to discuss HB 393. He appointed **REPS. GALLUS, NOENNIG** and **LANGE**.

ADJOURNMENT

Adjournment: 12 P.M.

REP. JIM SHOCKLEY, Chairman

LISA SWANSON, Secretary

JS/LS

EXHIBIT (juh29aad)